

PD-0711-18

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

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COURT OF CRIMINAL APPEALS
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EX PARTE BRANDON JOSEPH ADAMS

**On Appeal from the Court of Appeals
Eleventh Judicial District, Eastland, Texas
Cause Number 11-17-00332-CR
42nd District Court of Taylor County, Texas
Honorable James Eidson, Judge Presiding
Trial Court Cause Number 26,815-A**

ADAMS' RESPONSE TO STATE'S BRIEF ON THE MERITS

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EX PARTE BRANDON JOSEPH ADAMS

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Comes now the Brandon Joseph Adams, by and through his attorney, Kevin W. Willhelm, and submits this Response to the State's Brief on the Merits pursuant to Tex. R. App. Proc. 70.

STATEMENT OF THE CASE

On June 2, 2016, Brandon Joseph Adams (Adams) was indicted in Cause No. 26,815-A for the offense of aggravated assault with a deadly weapon against Joe Jeremy Romero, which occurred allegedly on October 18, 2015, a second-degree felony offense. (CR 18) Also, on June 2, 2106, Adams was indicted in Cause No. 26,816-A, for aggravated assault with a deadly weapon against Justin Paul Romero, which occurred allegedly on October 18, 2015, the same incident as the instant case. (RR 3:75-76) (Exhibit 1, Volume 1, pp. 72-73). Cause No. 26,816-A, was tried to a jury on September 18 and 19, 2017, and Adams was acquitted. (RR 3:272; RR 3:288) (Exhibit 1, Volume 2, p. 76, Exhibit 2 and Exhibit 3).

On November 3, 2017, Adams filed a Writ of Habeas Corpus Under the Doctrine of Collateral Estoppel Embodied in the Double Jeopardy Clause of the Fifth Amendment. (CR 59-63) The Trial Court

denied Adams' Writ. (RR 2:6-7) Furthermore, the Court denied Adams's request to stay the trial; therefore, exposing Adams to double jeopardy. (RR 2:11:21–12:16) On November 27 and 28, 2017, a jury trial was conducted, which resulted in a mistrial. (CR 80) Adams filed his notice of appeal on December 5, 2017. (CR 82)

The Eleventh District Court of Appeals in Eastland, Texas issued an opinion reversing the order of the trial court on June 14, 2018, and remanded the matter to the trial court with instructions to enter an order granting the relief requested in Adams' application for writ of habeas corpus. *Ex parte Adams*, No. 11-17-00332-CR, 2018 Tex. App. LEXIS 4372 (Tex. App.—Eastland June 14, 2018). No motion for rehearing was filed.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument was not granted from the Eleventh District Court of Appeals. Adams believes oral argument could be beneficial in articulating the facts to the applicable law.

ISSUE PRESENTED

- 1. Whether the collateral estoppel doctrine embodied in the Double Jeopardy Clause of the Fifth Amendment, as articulated in *Ashe v. Swenson* and this Court's opinions, bars a defendant's subsequent**

prosecution for stabbing a second combatant in the same altercation after he is acquitted by the affirmative defense of a third person in a previous trial?

STATEMENT OF FACTS

On October 18, 2015, Brandon Joseph Adams allegedly became involved in an altercation wherein Lucas Hisey was getting beaten by Justin Romero. Mr. Hisey was face down on the ground covering himself while Justin Romero pummeled Mr. Hisey about the head. Mr. Hisey was knocked unconscious. When Adams attempted to defend Mr. Hisey, Joe Romero prevented Adams from coming to Mr. Hisey's aid by getting in front of Adams and striking Adams. At some point, Mr. Adams pulled a knife to protect Mr. Hisey and stabbed both Romero brothers almost simultaneously in an effort to defend Mr. Hisey. (RR 3:218-255) (Exhibit 1, Volume 2, pp. 22-59).

Subsequently, Adams was indicted in Cause No. 26,816-A for aggravated assault with a deadly weapon against Justin Paul Romero. (RR 3:75-76) (Exhibit 1, Volume 1, pp. 72-73). Also, on the same day, Adams was indicted in the instant case, Cause No. 26,815-A for aggravated assault with a deadly weapon against Joe Jeremy Romero.

(CR 18). Both of these indictments arise out of the same incident, involve the same parties, the same set of facts, and the same defense. (RR 3:218-255) (Exhibit 1, Volume 2, pp. 22-59).

In Cause No. 26,816-A, the jury acquitted Adams based upon defense of another. (RR 3:272; RR 3:288) (Exhibit 1, Volume 2, p. 76, Exhibit 2 and Exhibit 3).

SUMMARY OF THE ARGUMENT

The trial court erred in denying Appellant's Writ of Habeas Corpus under the Doctrine of Collateral Estoppel Embodied in the Double Jeopardy Clause of the Fifth Amendment, and for failing to stay the trial in the instant case, because said denial caused Adams to undergo a second trial for an offense in which he had been acquitted previously.

In the first trial, the jury heard and asked to decide whether Adams was justified in using deadly force to defend Luke Hisey. Adams was acquitted. In a second trial, from which this appeal arises, a jury would be asked to decide the same exact ultimate issue.

The Eleventh District reviewed the entire trial record de novo and determined correctly that any subsequent trial would require a jury to

decide the same ultimate issue of fact which had been litigated previously and found in favor of Adams.

ARGUMENT

The State, in its argument, concedes the Court of Appeals could and should review the trial court's ruling de novo. Thus, the crux of the issue before this Court is whether the Court of Appeals applied the law of collateral estoppel correctly to the facts. *See State v. Stevens*, 235 S.W. 3d 736 (Tex. Crim. App., 2007). Appellate courts review de novo applications of law to facts that do not involve determinations of credibility and demeanor.¹³ A decision to apply collateral estoppel is a question of law, applied to the facts, for which de novo review is appropriate. *State v. Stevens*, at 740.

Courts have long recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to trial for the same offense.” *See Abney v. United States*, 431 US 651, 660-61 (1977).

The same logic and law apply to a collateral estoppel claim based on double jeopardy. *See Headrick v. State*, 988 S.W.2d 226, 228 (Tex. Crim. App. 1999). When is a collateral estoppel claim based on double jeopardy

principles? When the State could, but declines to, join two offenses which arise out of a single transaction and a final verdict or specific factual finding favorable to the defendant in the first prosecution would bar relitigation of the same fact in a second proceeding. *See Ashe v. Swenson*, 397 U.S. 436, 443 (1970); see generally 4 LaFare, Israel & King, *Criminal Procedure* § 17.4(a) at 633 (2d ed. 1999); Rodriguez, *Appellate Review of Pretrial Requests for Habeas Corpus Relief in Texas*, 32 Tex. Tech L. Rev. 45, 71 (2000).

The State could have joined the two offenses indicted in Cause No. 26,815-A and 26,816-A, which arose out of the same, single episode. The State declined to do so and tried Appellant in Cause No. 26,816-A first. That trial resulted in an acquittal of Adams based upon the factual issue of whether Adams was acting in defense of another. The final verdict and specific factual finding in favor of Adams in the first prosecution bars relitigation of the same facts in a second proceeding.

Now, the State is misconstruing the facts as determined by the Eleventh District Court of Appeals by claiming Joe Romero was not a combatant attempting to prevent the rescue of Hisey, but a “bystander” trying to stop the altercation.

Ashe mandates two inquiries. First, what facts were necessarily determined in the first lawsuit? See *United States v. Ballard*, 586 F.2d 1060 (5th Cir. 1978); *Adams v. United States*, 287 F.2d 701 (5th Cir. 1961). Second, has the government in a subsequent trial tried to relitigate facts necessarily established against it in the first trial? Facts so established in the first trial may not be used in the second trial either as ultimate or as evidentiary facts. *Blackburn v. Cross*, 510 F.2d 1014 (5th Cir. 1975); *Wingate v. Wainwright*, 464 F.2d 209 (5th Cir. 1972). Thus, while the parent doctrine of double jeopardy bars a subsequent prosecution based on a different section of the criminal code when 'the evidence required to support a conviction upon one of them (the indictments) would have been sufficient to warrant a conviction upon the other, its progeny, collateral estoppel, bars only the reintroduction or relitigation of facts already established against the government. To state the distinction in more prosaic terms, the traditional bar of double jeopardy prohibits the prosecution of the crime itself, were as collateral estoppel, in a more modest fashion, simply forbids the government from relitigating certain facts in order to establish the fact of the crime. See *United States v. Kramer*, 289 F.2d 909 (2nd Cir. 1961) (Friendly, J.).

In *Ashe v. Swenson*, three or four armed men robbed six poker players in the home of one of the victims. The accused was charged in separate counts with the robbery of each of the poker players. He went to trial on one count and was acquitted as a result of insufficient evidence. He was subsequently tried for the robbery of a different player. The only rationally conceivable issue in dispute was Ashe's identity as one of the robbers.

Holding that the guarantee against double jeopardy embodies the doctrine of collateral estoppel, the Court determined that the doctrine precluded the second prosecution and reversed the conviction. The Court defined collateral estoppel to mean "simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 U.S. at 443-444, 90 S.Ct. at 1194, 25 L.Ed.2d, at 475. The Court cautioned that this "rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a 19th Century pleading book, but with realism and rationality." *Id.*

The Eleventh District Court of Appeals reviewed the entire record de novo; not only of the first trial against Adams, but of the second mistrial, which should have been stayed, applied the law to the facts and determined that to prosecute Adams again would violate the doctrine of collateral estoppel and his guarantee against double jeopardy.

Again, the State concedes the standard of review and the law but then attempts to frustrate the narrative by claiming that Adams identity was not in question as was the issue in *Ashe*, or that Adams state of mind was not presented to the jury as in *Watkins*. See *Ex parte Watkins*, 73 S.W.3d 264 (Tex. Crim. App. 2002).

This Court held that a court must determine (1) exactly what facts were necessarily decided in the first proceeding, and (2) whether those “necessarily decided” facts constitute essential elements of the offense in the second trial. *Murphy v. State*, 239 S.W.3d 791, 795 (Tex. Crim. App. 2007); *Ex parte Taylor*, 101 S.W.3d 434, 440 (Tex. Crim. App. 2002). “In each case, courts must review the entire trial record to determine ‘with realism and rationality’ precisely what fact or combination of facts the jury necessarily decided and which will then bar their relitigation in a second criminal trial.” *Taylor*, 101 S.W.3d at 441 (quoting *Ashe*, 397 U.S. at 444).

The defendant must meet the burden of proving that the facts in issue were necessarily decided in the prior proceeding. *Murphy*, 239 S.W.3d at 795; *see also Guajardo v. State*, 109 S.W.3d 456, 460 (Tex. Crim. App. 2003) (“[t]he burden is ‘on the defendant to demonstrate, by examination of the record of the first proceeding, that the [factual] issue he seeks to foreclose was actually decided in the first proceeding.’”) (quoting *Schiro v. Farley*, 510 U.S. 222, 232 (1994)).

Ashe, and its progeny, directly apply to the instant case and bars relitigation, because the ultimate issue decided against the State in the first trial is the same issue that will be, and was, presented to a jury in a subsequent trial. In the first trial, the evidence showed that Justin Romero was beating Luke Hisey unconscious and Joe Romero was preventing Adams from rescuing Hisey, and Adams sought and received an instruction on the use of deadly force in defense of another person. In the second trial, the mistrial, the evidence showed that Justin Romero was beating Luke Hisey unconscious and Joe Romero was preventing Adams from rescuing Hisey, and Adams sought and received an instruction on the use of deadly force. Clearly, Adams acted in defense of Hisey against both Justin Romero

and Joe Romero, as determined by the Court of Appeals. *Court's opinion at 6.*

The law established by *Ashe* or *Watkins*, and their progeny, is not whether the specific fact litigated in those cases, ie. – identity or state of mind is in question in subsequent matters, but rather the principle that an individual should not be subjected to suffering through litigation, which could deprive him of his liberty, a second time when he has been acquitted of an offense wherein multiple “victims” were involved; and the prosecution could have tried the entire matter in one trial but chose to separate the trials to attempt to obtain multiple bites of the apple.

Conclusion

When the Eleventh District Court of Appeals applied the standard of de novo review and studied the entire record pertaining to Brandon Joseph Adams, it concluded correctly that any subsequent trial involving the facts, circumstances and individuals involved in the altercation of October 18, 2015 , would put Adams in danger of double jeopardy. Therefore, “Adams should be protected from having to ‘run the gauntlet’ again and that collateral estoppel bars the State from relitigating the

issue of defense of a third person under the circumstances present in this case.” *Court’s opinion at 6.*

PRAYER FOR RELIEF

Respectfully, Brandon Joseph Adams prays this Court affirm the judgment of the Eleventh Court of Appeals regarding Adams’s sole issue and remand to the trial court, order the trial court to enter an order consistent with their ruling, and for such other and further relief to which Brandon Joseph Adams may be entitled, either at law or in equity.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Britt Lindsey, affirm that the above brief is in compliance with the Rules of Appellate Procedure. The font size in the brief is 14 point, except for footnotes which are 12 point. The word count is 1916, excluding the exceptions listed in Rule 9.4. The word count of the entire brief is 2960.

/s/ Kevin W. Willhelm
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CERTIFICATE OF SERVICE

I certify that on this 28th day of December, 2018, a true copy of the foregoing Adams Response to State's Brief on the Merits was served on the parties according to the requirements of law by email or efilng to:

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